

Bur. of Consumer Financial Protection

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use of any means or instruments of transportation or communication in interstate commerce, or of the mails, unless a Statement of Record is in effect in accordance with the provisions of this part. In non-exempt transactions, the developer must give each purchaser a printed Property Report, meeting the requirements of this part, in advance of the purchaser's signing of any contract or agreement for sale or lease. Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB Control No. 3170-0012.

§ 1010.4 Exemptions—general.

(a) The exemptions available under §§1010.5 through 1010.16 are not applicable when the method of sale, lease or other disposition of land or an interest in land is adopted for the purpose of evasion of the Act.

(b) With the exception of the sales or leases which are exempt under §1010.5, the anti-fraud provisions of the Act (15 U.S.C. 1703(a)(2)) apply to exempt transactions. The anti-fraud provisions make it unlawful for a developer or agent to employ any device, scheme, or artifice to:

(1) Defraud;

(2) To obtain money or property by means of any untrue statement of a material fact, or

(3) To omit to state a material fact necessary in order to make the statements made not misleading, with respect to any information pertinent to the lot or subdivision; or

(4) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

(c) The anti-fraud provisions of the Act require that certain representations be included in the contract in transactions which are not exempt under §1010.5. Specifically, the Act requires that if a developer or agent represents that roads, sewers, water, gas or electric service or recreational amenities will be provided or completed by the developer, the contract must stipulate that the services or amenities will be provided or completed. See §1011.15(f).

(d) Eligibility for exemptions available under §§1010.5 through 1010.14 is self-determining. With the exception of the exemptions available under §§1010.15 and 1010.16, a developer is not required to file notice with or obtain the approval of the Director in order to take advantage of an exemption. If a developer elects to take advantage of an exemption, the developer is responsible for maintaining records to demonstrate that the requirements of the exemption have been met.

(e) A developer may present evidence, or otherwise discuss, in an informal hearing before the Office of Nonbank Supervision, the Bureau's position on the jurisdiction or non-exempt status of a particular subdivision.

§ 1010.5 Statutory exemptions.

A listing of the statutory exemptions is contained in 15 U.S.C. 1703. In accordance with 15 U.S.C. 1703(a)(2), if the sale involves a condominium or multi-unit construction, a presale clause conditioning the sale of a unit on a certain percentage of sales of other units is permissible if it is legally binding on the parties and is for a period not to exceed 180 days. However, the 180-day provision cannot extend the 2-year period for performance. The permissible 180 days is calculated from the date the first purchaser signs a sales contract in the project or, if a phased project, from the date the first purchaser signs the first sales contract in each phase.

§ 1010.6 One hundred lot exemption.

The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, the subdivision has contained fewer than 100 lots, exclusive of lots which are exempt from jurisdiction under §1010.5. In the sale of lots in the subdivision that are not exempt under §1010.5, the developer must comply with the Act's anti-fraud provisions, set forth in §1010.4(b) and (c).

§ 1010.7 Twelve lot exemption.

(a) The sale of lots is exempt from the registration requirements of the Act if, beginning with the first sale after June 20, 1980, no more than twelve lots in the subdivision are sold in the subsequent twelve-month period.

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Thereafter, the sale of the first twelve lots is exempt from the registration requirements if no more than twelve lots were sold in each previous twelve month period which began with the anniversary date of the first sale after June 20, 1980.

(b) A developer may apply to the Director to establish a different twelve month period for use in determining eligibility for the exemption and the Director may allow the change if it is for good cause and consistent with the purpose of this section.

(c) In determining eligibility for this exemption, all lots sold or leased in the subdivision after June 20, 1980, are counted, whether or not the transactions are otherwise exempt. Sales or leases made prior to June 21, 1980, are not considered in determining eligibility for the exemption.

(d) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§ 1010.8 Scattered site subdivisions.

(a) The sale of lots in a subdivision consisting of noncontiguous parts is exempt from the registration requirements of the Act if:

(1) Each noncontiguous part of the subdivision contains twenty or fewer lots; and

(2) Each purchaser or purchaser's spouse makes a personal, on-the-lot inspection of the lot purchased prior to signing a contract.

(b) For purposes of this exemption, interruptions such as roads, parks, small bodies of water or recreational facilities do not serve to break the contiguity of parts of a subdivision.

(c) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§ 1010.9 Twenty acre lots.

(a) The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, each lot in the subdivision has contained at least twenty acres. In determining eligibility for the exemption, easements for ingress and egress or public utilities are considered part of the total acreage of the lot if the purchaser retains ownership of the property affected by the easement.

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(b) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§ 1010.10 Single-family residence exemption.

(a) *General.* The sale of a lot which meets the requirements specified under paragraphs (b) and (c) of this section is exempt from the registration requirements of the Act.

(b) *Subdivision requirements.* (1) The subdivision must meet all local codes and standards.

(2) In the promotion of the subdivision there must be no offers, by direct mail or telephone solicitation, of gifts, trips, dinners or use of similar promotional techniques to induce prospective purchasers to visit the subdivision or to purchase a lot.

(c) *Lot requirements.* (1) The lot must be located within a municipality or county where a unit of local government or the state specifies minimum standards in the following areas for the development of subdivision lots taking place within its boundaries:

- (i) Lot dimensions.
- (ii) Plat approval and recordation.
- (iii) Roads and access.
- (iv) Drainage.
- (v) Flooding.
- (vi) Water supply.
- (vii) Sewage disposal.

(2) Each lot sold under the exemption must be either zoned for single-family residences or, in the absence of a zoning ordinance, limited exclusively by enforceable covenants or restrictions to single-family residences. Manufactured homes, townhouses, and residences for one-to-four family use are considered single-family residences for purposes of this exemption provision.

(3) The lot must be situated on a paved street or highway which has been built to standards established by the state or the unit of local government in which the subdivision is located. If the roads are to be public roads they must be acceptable to the unit of local government that will be responsible for maintenance. If the street or highway is not complete, the developer must post a bond or other surety acceptable to the municipality or county in the full amount of the